



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

### NORTHERN REGIONAL OFFICE

Douglas W. Domenech  
Secretary of Natural Resources

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David K. Paylor  
Director

Thomas A. Faha  
Regional Director

January 5, 2011

Mr. Thomas Ogorchock  
Adaptive Concrete Solutions  
4215 Lafayette Enter Drive, Suite 1  
Chantilly, VA 20151

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Re: Reissuance of VPDES Permit No. VA0090441  
Adaptive Concrete Solutions, Loudoun County

Dear Mr. Ogorchock:

The Department of Environmental Quality (DEQ) has approved the enclosed effluent limitations and monitoring requirements for the above-referenced permit. This permit supersedes the previous VPDES Permit VA0090441 issued to this facility. Copies of your permit and fact sheet are enclosed.

A Discharge Monitoring Report (DMR) form is no longer included in the reissuance package since you are a participant in the electronic DMR (e-DMR) program that allows you to submit the effluent monitoring data electronically. The first electronic DMR submittal for the this new permit for the month of February 2011 is due by March 10, 2011. Please reference the effluent limits in your permit and report monitoring results in e-DMR to the same number of significant digits as are included in the permit limits for the parameter. Answers to frequently asked questions about the e-DMR system, including the e-DMR registration process, are available at <http://www.deq.virginia.gov/water/edmrfaq.html>. The regional contact for e-DMR is Rebecca Vice; she can be reached at (703) 583-3922 or by e-mail at [Rebecca.Vice@deq.virginia.gov](mailto:Rebecca.Vice@deq.virginia.gov).

As provided by Rule 2A:2 of the Supreme Court of Virginia, you have thirty days from the date of service (the date you actually received this decision or the date it was mailed to you, whichever occurred first) within which to appeal this decision by filing a notice of appeal in accordance with the Rules of the Supreme Court of Virginia with the Director, Department of Environmental Quality. In the event that this decision is served on you by mail, three days are added to that period.

Alternately, any owner under §§ 62.1-44.16, 62.1-44.17, and 62.1-44.19 of the State Water Control Law aggrieved by any action of the State Water Control Board taken without a formal hearing, or by inaction of the Board, may demand in writing a formal hearing of such owner's grievance, provided a petition requesting such hearing is filed with the Board. Said petition must meet the requirements set forth in §1.23(b) of the Board's Procedural Rule No. 1. In cases involving actions of the Board, such petition must be filed within thirty days after notice of such action is mailed to such owner by certified mail.

If you have questions about the permit, please contact Alison Thompson at (703)583-3834, or by E-mail at [Alison.Thompson@deq.virginia.gov](mailto:Alison.Thompson@deq.virginia.gov).

Respectfully,

A handwritten signature in black ink, appearing to read 'Bryant Thomas', with a stylized flourish at the end.

Bryant Thomas  
Water Permits Manager

Enc.: Permit No. VA0090441

cc: DEQ-Water, OWPP  
EPA-Region III, 3WP12  
Department of Health, Culpeper  
Water Compliance, NRO



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

Permit No. **VA0090441**  
Effective Date: **January 5, 2011**  
Expiration Date: **January 4, 2016**

### AUTHORIZATION TO DISCHARGE UNDER THE VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM AND THE VIRGINIA STATE WATER CONTROL LAW

In compliance with the provisions of the Clean Water Act as amended and pursuant to the State Water Control Law and regulations adopted pursuant thereto, the following owner is authorized to discharge in accordance with the information submitted with the permit application, and with this permit cover page, Part I – Effluent Limitations and Monitoring Requirements, Part II – Stormwater Requirements, and Part III – Conditions Applicable To All VPDES Permits, as set forth herein.

Owner Name: Adaptive Concrete Solutions  
Facility Name: Adaptive Concrete Solutions  
County: Loudoun  
Facility Location: 44146 Wade Road, Chantilly, VA

The owner is authorized to discharge to the following receiving stream:

Stream Name: Sand Branch (Outfall 001); Cub Run, UT (Outfall 002)  
River Basin: Potomac  
River Subbasin: Potomac  
Section: 7a  
Class: III  
Special Standards: g

A handwritten signature in black ink, reading "Thomas A. Faha", written over a horizontal line.

Thomas A. Faha  
Director, Northern Regional Office  
Department of Environmental Quality

01 - 05 - 11

Date

**A. Effluent Limitations and Monitoring Requirements****1. Outfalls 001 and 002 – Industrial stormwater discharges**

- a. There shall be no discharge of floating solids or visible foam in other than trace amounts.
- b. During the period beginning with the permit's effective date and lasting until the expiration date, the permittee is authorized to discharge from Outfall Number 001 and 002. Such discharges shall be limited and monitored by the permittee as specified below.

Parameter	Discharge Limitations				Monitoring Requirements	
	<u>Monthly Average</u> <sup>(1)</sup>	<u>Weekly Average</u> <sup>(1)</sup>	<u>Minimum</u>	<u>Maximum</u> <sup>(1)</sup>	<u>Frequency</u>	<u>Sample Type</u>
Flow (MGD)	NL	NA	NA	NL	1/M	Estimate
pH	NA	NA	6.0 S.U.	9.0 S.U.	1/M	Grab
Total Suspended Solids, TSS	30 mg/L	NA	NA	60 mg/L	1/M	Grab
Total Petroleum Hydrocarbons	NA	NA	NA	NL	1/6M	Grab
Total Recoverable Iron	NA	NA	NA	NL	1/6M	Grab

<sup>(1)</sup> See Part I.B.

MGD = Million gallons per day.

NA = Not applicable.

NL = No limit; monitor and report.

S.U. = Standard units.

1/M = Once every month.

1/6M = Once every six months.

Grab = An individual sample collected over a period of time not to exceed 15-minutes.

Estimate = Reported flow is to be based on the technical evaluation of the sources contributing to the discharge.

\*Total Petroleum Hydrocarbons shall be analyzed using the Wisconsin Department of Natural Resources Modified Diesel Range Organics Method as specified in Wisconsin publication SW-141(1995), or by EPA SW-846 Method 8015C for diesel range organics, or by EPA SW-846 Method 8270D. If Method 8270D is used, the lab must report the combination of diesel range organics and polynuclear aromatic hydrocarbons.

\*\*Monitoring is required by grab sample, collected during the first thirty minutes of the discharge. If during the first thirty minutes it was impracticable, then a grab sample shall be taken during the first hour of discharge.

\*\*\*The semiannual monitoring periods shall be January through June and July through December. The DMR shall be submitted no later than the 10<sup>th</sup> day of the month following the monitoring period.

**B. Additional Monitoring Requirements, Quantification Levels and Compliance Reporting****1. Quantification Levels**

- a. The quantification levels (QL) shall be less than or equal to the following concentrations:

<u>Characteristic</u>	<u>Quantification Level</u>
TSS	1.0 mg/L
TPH	0.50 mg/l

- b. The QL is defined as the lowest concentration used to calibrate a measurement system in accordance with the procedures published for the method. The permittee shall use any method in accordance with Part III.A of this permit.
- c. It is the responsibility of the permittee to ensure that proper quality assurance/quality control (QA/QC) protocols are followed during the sampling and analytical procedures. QA/QC information shall be documented to confirm that appropriate analytical procedures have been used and the required QLs have been attained.

**2. Compliance Reporting for parameters in Part I.A.**

- a. Monthly Average – Compliance with the monthly average limitations and/or reporting requirements for the parameters listed in Part I.B.1.a. shall be determined as follows: All concentration data below the QL of the measurement system shall be treated as zero. All concentration data equal to or above the QL shall be treated as it is reported. An arithmetic average shall be calculated using all reported data for the

month, including the defined zeros. This arithmetic average shall be reported on the Discharge Monitoring Report (DMR) as calculated. If all data are below the QL, then the average shall be reported as "<QL". If reporting for quantity is required on the DMR and the reported monthly average concentration is <QL, then report "<QL" for the quantity. Otherwise use the reported concentration data (including the defined zeros) and flow data for each sample day to determine the daily quantity and report the monthly average of the calculated daily quantities.

- b. Daily Maximum - Compliance with the daily maximum limitations and/or reporting requirements for the parameters listed in Part I.B.1.a. shall be determined as follows: All concentration data below the QL of the measurement system shall be treated as zero. All concentration data equal to or above the QL shall be treated as reported. An arithmetic average shall be calculated using all reported data, including the defined zeros, collected within each day during the reporting month. The maximum value of these daily averages thus determined shall be reported on the DMR as the Daily Maximum. If all data are below the QL, then the maximum value of the daily averages shall be reported as "<QL". If reporting for quantity is required on the DMR and the reported daily maximum concentration is <QL, then report "<QL" for the quantity. . Otherwise use the reported daily average concentrations (including the defined zeros) and corresponding daily flows to determine daily average quantities and report the maximum of the daily average quantities during the reporting month.
- c. Single Datum - Any single datum required shall be reported as <QL if it is less than the QL as defined above above. Otherwise the numerical value shall be reported.
- d. Significant Digits - The permittee shall report at least the same number of significant digits as the permit limit for a given parameter. Regardless of the rounding convention used (i.e., 5 always rounding up or to the nearest even number) by the permittee, the permittee shall use the convention consistently, and shall ensure that consulting laboratories employed by the permittee use the same convention.

### C. Other Requirements and Special Conditions

#### 1. Notification Levels

The permittee shall notify the Department as soon as they know or have reason to believe:

- a. That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in this permit, if that discharge will exceed the highest of the following notification levels:
  - (1) One hundred micrograms per liter;
  - (2) Two hundred micrograms per liter for acrolein and acrylonitrile; five hundred micrograms per liter for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter for antimony;
  - (3) Five times the maximum concentration value reported for that pollutant in the permit application; or
  - (4) The level established by the Board.
- b. That any activity has occurred or will occur which would result in any discharge, on a nonroutine or infrequent basis, of a toxic pollutant, which is not limited in this permit, if that discharge will exceed the highest of the following notification levels:
  - (1) Five hundred micrograms per liter;
  - (2) One milligram per liter for antimony;
  - (3) Ten times the maximum concentration value reported for that pollutant in the permit application; or
  - (4) The level established by the Board.

2. Materials Handling/Storage

Any and all product, materials, industrial wastes, and/or other wastes resulting from the purchase, sale, mining, extraction, transport, preparation, and/or storage of raw or intermediate materials, final product, by-product or wastes, shall be handled, disposed of, and/or stored in such a manner so as not to permit a discharge of such product, materials, industrial wastes, and/or other wastes to State waters, except as expressly authorized.

3. Operation and Maintenance (O&M) Manual Requirement

The permittee shall review the existing Operations and Maintenance (O&M) Manual and notify the DEQ Northern Regional Office, in writing by April 5, 2011, whether it is still accurate and complete. If the O&M Manual is no longer accurate and complete, a revised O&M Manual shall be submitted for approval to the DEQ Northern Regional Office by April 5, 2011. The permittee will maintain an accurate, approved O&M Manual for the treatment works. This manual shall include, but not necessarily be limited to, the following items, as appropriate:

- a. Treatment system design, treatment system operation, routine preventative maintenance of units within the treatment system, critical spare parts inventory and record keeping;
- b. Techniques to be employed in the collection, preservation and analysis of effluent samples (and sludge samples if sludge analyses are required);
- c. Procedures for handling, storing, and disposing of all wastes, fluids, and pollutants that will prevent these materials from reaching state waters;
- d. A plan for the management and/or disposal of waste solids, residues, /Residue/Sludge Management and Disposal Plan;
- e. Discussion of Best Management Practices, if applicable; and
- f. Procedures for measuring and recording the duration and volume of treated wastewater discharged.

Any changes in the practices and procedures followed by the permittee shall be documented and submitted for DEQ Northern Regional Office staff approval within 90 days of the effective date of the changes. Upon approval of the submitted manual changes, the revised manual becomes an enforceable part of the permit. Noncompliance with the O&M Manual shall be deemed a violation of the permit.

4. Water Quality Criteria Reopener

Should effluent monitoring indicate the need for any water quality-based limitations, this permit may be modified or alternatively revoked and reissued to incorporate appropriate limitations.

5. Total Maximum Daily Load (TMDL) Reopener

This permit shall be modified or alternatively revoked and reissued if any approved wasteload allocation procedure, pursuant to Section 303(d) of the Clean Water Act, imposes wasteload allocations, limits or conditions on the facility that are not consistent with the permit requirements.

6. Reuse of Treated Wastewater for Dust Control

Treated wastewater may be used on site for the purposes of dust suppression. Dust suppression shall be carried out as a best management practice but not a wastewater disposal method. No ponding or surface runoff shall occur as a result of such activity.

7. Restrictions of Waste Concrete Reclamation

Any waste concrete and dredged solids from the settling basins shall be managed within a designated area, and any wastewaters including storm water generated from these activities shall be collected for recycle or treated prior to discharge.

8. Vehicle and Equipment Maintenance

Vehicles and equipment utilized during the industrial activity on site must be operated and maintained in such a manner as to minimize the potential or actual point source pollution of surface waters. Fuels, lubricants, coolants, and hydraulic fluids, or any other petroleum products shall not be disposed of by discharging on the ground or into surface waters. Spent fluids shall be disposed of in a manner so as not to enter the surface or ground waters of the state and in accordance with the applicable state and federal disposal regulations. Any spilled fluids shall be cleaned up to the maximum extent practicable and disposed of in a manner so as not to allow their entry into the surface or ground waters of the state.

9. Wastewater Collection Requirement

There will be no discharge of process wastewater. Permittee shall maintain a minimum freeboard of one foot in the wastewater collection ponds at the concrete batching, panel washing, and equipment washdown areas at all times. Should the one-foot freeboard not be maintained, the permittee shall immediately notify the DEQ, Northern Regional Office, describe the problem and corrective measures taken to correct the problem. Within 5 days of notification, the permittee shall submit a written statement to the Regional Office of explanation and corrective measures taken.

10. Washing Activities

There shall be no product mixing unit washout or truck washing activities conducted outside of the designated washdown and washout areas. All washout water shall be collected for recycle.

## STORM WATER MANAGEMENT

A. Recording of results. For each discharge measurement or sample taken pursuant to the storm event monitoring requirements of this permit, the permittee shall record and report with the Discharge Monitoring Reports (DMRs) the following information:

1. The date and duration (in hours) of the storm event(s) sampled;
2. The rainfall measurements or estimates (in inches) of the storm event which generated the sampled discharge; and
3. The duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event.

B. Representative discharge. When a facility has two or more exclusively storm water outfalls that, based on a consideration of industrial activity, significant materials, and management practices and activities within the area drained by the outfall, the permittee reasonably believes discharge substantially identical effluent, the permittee may test the effluent of one of such outfalls and include with the DMRs an explanation that the quantitative data also applies to the substantially identical outfalls provided that the permittee includes a description of the location of the outfalls and explains in detail why the outfalls are expected to discharge substantially identical effluent. In addition, for each exclusively storm water outfall that the permittee believes is representative, an estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage area (e.g., low (under 40%), medium (40% to 65%) or high (above 65%)) shall be provided.

C. Sampling waiver. When a permittee is unable to collect storm water samples required in Part I A or other applicable sections of this permit within a specified sampling period due to adverse climatic conditions, the permittee shall collect a substitute sample from a separate qualifying event in the next period and submit these data along with the data for the routine sample in that period. Adverse weather conditions which may prohibit the collection of samples include weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.).

D. Quarterly visual examination of storm water quality. The permittee shall perform and document a visual examination of a storm water discharge associated with industrial activity from each outfall, except discharges exempted below. The visual examination(s) must be made during daylight hours (e.g., normal working hours), at least once in each of the following three-month periods: January through March, April through June, July through September, and October through December.

1. Examinations shall be made of samples collected within the first 30 minutes (or as soon thereafter as practical, but not to exceed one hour) of when the runoff or snowmelt begins discharging. The examination shall document observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of storm water pollution. The examination must be conducted in a well lit area. No analytical tests are required to be performed on the samples. All such samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previous measurable (greater than 0.1 inch rainfall) storm event. The required 72-hour storm event interval is waived where the preceding measurable storm event did not result in a measurable discharge from the facility. The required 72-hour storm event interval may also be waived where the permittee documents that less than a 72-hour interval is representative for local storm events during the season when sampling is being conducted. If no qualifying storm event resulted in discharge from the facility during a monitoring period, visual monitoring is exempted provided that the permittee document that no qualifying storm event occurred that resulted in storm water discharge during that quarter. Where practicable, the same individual should carry out the collection and examination of discharges for the entire permit term.

2. Visual examination reports must be maintained onsite with the pollution prevention plan. The report shall include the outfall location, the examination date and time, examination personnel, the nature of the discharge (i.e., runoff or snow melt), visual quality of the storm water discharge (including observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of storm water pollution), visual quality of the receiving stream (including observations of solids deposition and oil sheen from the industrial activity) in the vicinity of the outfall (including ditches and conveyances) and probable sources of any observed storm water contamination.

3. If the facility has two or more outfalls that, based on a consideration of industrial activity, significant materials, and management practices and activities within the area drained by the outfall, the permittee reasonably believes discharge substantially identical effluents, the permittee may collect a sample of effluent of one of such outfalls and report that the examination data also applies to the substantially identical outfall(s) provided that the permittee includes in the storm water pollution prevention plan a description of the location of the outfalls and explains in detail why the outfalls are expected to discharge substantially identical effluents. In addition, for each outfall that the permittee believes is representative, an estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage area (i.e., low (under 40%), medium (40 to 65%), or high (above 65%)) shall be provided in the plan.

4. When the permittee is unable to conduct the visual examination due to adverse climatic conditions, the permittee must document the reason for not performing the visual examination and retain this documentation onsite with the records of the visual examinations. Adverse weather conditions that may prohibit the collection of samples include weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.).

**E. Allowable nonstorm water discharges.**

1. The following nonstorm water discharges are authorized by this permit provided the nonstorm water component of the discharge is in compliance with Part II E 2 below.

- a. Discharges from fire fighting activities;
- b. Fire hydrant flushings;
- c. Potable water including water line flushings;
- d. Uncontaminated air conditioning or compressor condensate;
- e. Irrigation drainage;
- f. Landscape watering provided all pesticides, herbicides, and fertilizer have been applied in accordance with manufacturer's instructions;
- g. Pavement wash waters where no detergents are used and no spills or leaks of toxic or hazardous materials have occurred (unless all spilled material has been removed);
- h. Routine external building wash down which does not use detergents;
- i. Uncontaminated ground water or spring water;
- j. Foundation or footing drains where flows are not contaminated with process materials such as solvents;
- k. Incidental windblown mist from cooling towers that collects on rooftops or adjacent portions of the facility, but NOT intentional discharges from the cooling tower (e.g., "piped" cooling tower blowdown or drains).

2. Except for flows from fire fighting activities, the Storm Water Pollution Prevention Plan must include:

- a. Identification of each allowable nonstorm water source;

b. The location where it is likely to be discharged; and

c. Descriptions of appropriate BMPs for each source.

3. If mist blown from cooling towers is included as one of the allowable nonstorm water discharges, the facility must specifically evaluate the potential for the discharges to be contaminated by chemicals used in the cooling tower. The permittee must determine that the levels of such chemicals in the discharges will not cause or contribute to a violation of an applicable water quality standard after implementation of the BMPs selected to control such discharges.

F. Releases of hazardous substances or oil in excess of reportable quantities. The discharge of hazardous substances or oil in the storm water discharge(s) from this facility shall be prevented or minimized in accordance with the applicable storm water pollution prevention plan for the facility. This permit does not authorize the discharge of hazardous substances or oil resulting from an onsite spill. Where a release containing a hazardous substance or oil in an amount equal to or in excess of a reportable quantity established under either 40 CFR Part 110 (1998), 40 CFR Part 117 (1998) or 40 CFR Part 302 (1998) occurs during a 24-hour period, the permittee is required to notify the department in accordance with the requirements of Part III G as soon as he has knowledge of the discharge. Where a release enters a municipal separate storm sewer system (MS4), the permittee shall also notify the owner of the MS4. In addition, the storm water pollution prevention plan required by this permit must be reviewed to identify measures to prevent the reoccurrence of such releases and to respond to such releases, and the plan must be modified where appropriate. This permit does not relieve the permittee of the reporting requirements of 40 CFR Part 110 (1998), 40 CFR Part 117 (1998) and 40 CFR Part 302 (1998) or §62.1-44.34:19 of the Code of Virginia.

G. Storm water pollution prevention plans. A storm water pollution prevention plan is required to be developed for the facility. The plan shall be prepared in accordance with good engineering practices, and shall identify potential sources of pollution which may reasonably be expected to affect the quality of storm water discharges associated with industrial activity from the facility. In addition, the plan shall describe and ensure the implementation of practices which are to be used to reduce the pollutants in storm water discharges associated with industrial activity at the facility and to assure compliance with the terms and conditions of this permit. Permittees must implement the provisions of the storm water pollution prevention plan as a condition of this permit.

The storm water pollution prevention plan requirements of this permit may be fulfilled by incorporating by reference other plans or documents such as an erosion and sediment control plan, a spill prevention control and countermeasure (SPCC) plan developed for the facility under §311 of the Clean Water Act or best management practices (BMP) programs otherwise required for the facility provided that the incorporated plan meets or exceeds the plan requirements of Part II G 4. If an erosion and sediment control plan is being incorporated by reference, it shall have been approved by the locality in which the activity is to occur or by another appropriate plan approving authority authorized under the Virginia Erosion and Sediment Control Regulation, 4VAC50-30. All plans incorporated by reference into the storm water pollution prevention plan become enforceable under this permit.

1. Deadlines for plan preparation and compliance.

a. For a storm water discharge associated with industrial activity that is existing on or before the effective date of this permit, the storm water pollution prevention plan shall be prepared and implemented as expeditiously as practicable, but not later than 270 days from the date of coverage under this permit. For a facility that was covered by the previous permit, a storm water pollution prevention plan was required to be developed and implemented for that facility. Within 120 days after the date of coverage under this permit, the existing storm water pollution prevention plan shall be reviewed and modified, as appropriate, to conform to the requirements of this permit. The existing storm water pollution prevention plans shall continue to be implemented until a new plan, if required, is developed and implemented.

b. The plan for any facility where industrial activity commences after the effective date of this permit, and except as provided elsewhere in this permit, shall be prepared, implemented and provide for compliance with the terms of the plan and this permit on or before the date of submission of a registration statement to be covered under this permit.

c. In cases where construction is necessary to implement measures required by the plan, the plan shall contain a schedule that provides compliance with the plan as expeditiously as practicable, but no later than three years from the date of coverage under this permit. Where a construction compliance schedule is included in the plan, the schedule shall include appropriate nonstructural and/or temporary controls to be implemented in the affected portion(s) of the facility prior to completion of the permanent control measure.

2. Signature and plan review.

a. The plan shall be signed in accordance with Part III K, and be retained on-site at the facility covered by this permit in accordance with Part III B.

b. The permittee shall make the storm water pollution prevention plan, annual site compliance inspection report, or other information available to the department upon request.

c. The director, or his designee, may notify the permittee in writing at any time that the plan does not meet one or more of the minimum requirements of this part. Such notification shall identify those provisions of the permit which are not being met by the plan, and identify which provisions of the plan require modifications in order to meet the minimum requirements of this part. Within 60 days of such notification from the director, or as otherwise provided by the director, the permittee shall make the required changes to the plan and shall submit to the department a written certification that the requested changes have been made.

3. Keeping plans current. The permittee shall amend the plan whenever there is a change in design, construction, operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants to surface waters of the state or if the storm water pollution prevention plan proves to be ineffective in eliminating or significantly minimizing pollutants from sources identified under Part II G 4 b of this permit, or in otherwise achieving the general objectives of controlling pollutants in storm water discharges associated with industrial activity.

4. Contents of plan. The plan shall include, at a minimum, the following items:

a. Pollution prevention team. Each plan shall identify a specific individual or individuals within the facility organization as members of a storm water pollution prevention team that are responsible for developing the storm water pollution prevention plan and assisting the facility or plant manager in its implementation, maintenance, and revision. The plan shall clearly identify the responsibilities of each team member. The activities and responsibilities of the team shall address all aspects of the facility's storm water pollution prevention plan.

b. Description of potential pollutant sources. Each plan shall provide a description of potential sources which may reasonably be expected to add significant amounts of pollutants to storm water discharges or which may result in the discharge of pollutants during dry weather from separate storm sewers draining the facility. Each plan shall identify all activities and significant materials which may potentially be significant pollutant sources. Each plan shall include, at a minimum:

(1) Drainage. A site map indicating an outline of the portions of the drainage area of each storm water outfall that are within the facility boundaries, each existing structural control measure to reduce pollutants in storm water runoff, surface water bodies, locations where significant materials are exposed to precipitation, locations where major spills or leaks identified under Part II G 4 b (3) have occurred, and the locations of the following activities: fueling stations; vehicle and equipment maintenance and/or cleaning areas; loading/unloading areas; bag house or other dust control device, recycle/sedimentation pond, clarifier or other

device used for the treatment of process wastewater, and the areas that drain to the treatment device, locations used for the storage or disposal of wastes; liquid storage tanks; processing areas; and storage areas. The map must indicate the outfall locations and the types of discharges contained in the drainage areas of the outfalls; and for each area of the facility that generates storm water discharges associated with industrial activity with a reasonable potential for containing significant amounts of pollutants, a prediction of the direction of flow, and an identification of the types of pollutants which are likely to be present in storm water discharges associated with industrial activity. Factors to consider include the toxicity of the chemicals; quantity of chemicals used, produced or discharged; the likelihood of contact with storm water; and history of significant leaks or spills of toxic or hazardous pollutants. Flows with a significant potential for causing erosion shall be identified.

(2) Inventory of exposed materials. An inventory of the types of materials handled at the site that potentially may be exposed to precipitation. Such inventory shall include a narrative description of significant materials that have been handled, treated, stored or disposed in a manner to allow exposure to storm water between the time of three years prior to the date of coverage under this general permit and the present; method and location of on-site storage or disposal; materials management practices employed to minimize contact of materials with storm water runoff between the time of three years prior to the date of coverage under this general permit and the present; the location and a description of existing structural and nonstructural control measures to reduce pollutants in storm water runoff; and a description of any treatment the storm water receives.

(3) Spills and leaks. A list of significant spills and significant leaks of toxic or hazardous pollutants that occurred at areas that are exposed to precipitation or that otherwise drain to a storm water conveyance at the facility after the date of three years prior to the date of coverage under this general permit. Such list shall be updated as appropriate during the term of the permit.

(4) Sampling data. A summary of existing discharge sampling data describing pollutants in storm water discharges from the facility, including a summary of sampling data collected during the term of this permit.

(5) Risk identification and summary of potential pollutant sources. A narrative description of the potential pollutant sources from the following activities: loading and unloading operations; outdoor storage activities; outdoor manufacturing or processing activities; significant dust or particulate generating processes; and on-site waste disposal practices. The description shall specifically list any significant potential source of pollutants at the site and for each potential source, any pollutant or pollutant parameter (e.g., biochemical oxygen demand, etc.) of concern shall be identified.

c. Measures and controls. Each facility covered by this permit shall develop a description of storm water management controls appropriate for the facility, and implement such controls. The appropriateness and priorities of controls in a plan shall reflect identified potential sources of pollutants at the facility. The description of storm water management controls shall address the following minimum components, including a schedule for implementing such controls:

(1) Good housekeeping. Good housekeeping requires the clean and orderly maintenance of areas that may contribute pollutants to storm waters discharges. Particular attention should be paid to areas where raw materials are stockpiled, material handling areas, storage areas, liquid storage tanks and loading/unloading areas. The plan shall describe procedures performed to minimize the discharge of: spilled cement, aggregate (including sand and gravel), fly ash, settled dust, or other significant material in storm water from paved portions of the site that are exposed to storm water. Regular sweeping or other equivalent measures to minimize the presence of these materials shall be employed. The frequency of sweeping or equivalent

measures shall be specified in the plan based upon a consideration of the amount of industrial activity occurring in the areas and the frequency of precipitation, but it shall be a minimum of once a week if cement, aggregate, kiln dust, fly ash or settled dust are being handled/processed. Where practicable, efforts must be made to prevent the exposure of fine granular solids (cement, fly ash, etc.) to storm water by storing these materials in enclosed silos/hoppers, buildings or under other covering.

(2) Preventive maintenance. A preventive maintenance program shall involve timely inspection and maintenance of storm water management devices (e.g., cleaning oil/water separators, catch basins) inspecting and testing facility equipment and systems to uncover conditions that could cause breakdowns or failures resulting in discharges of pollutants to surface waters, and appropriate maintenance of such equipment and systems.

(3) Spill prevention and response procedures. Areas where potential spills which can contribute pollutants to storm water discharges can occur, and their accompanying drainage points shall be identified clearly in the storm water pollution prevention plan. Where appropriate, specifying material handling procedures, storage requirements, and use of equipment such as diversion valves in the plan should be considered. Procedures for cleaning up spills shall be identified in the plan and made available to the appropriate personnel. The necessary equipment to implement a clean up should be available to personnel.

(4) Routine facility inspections. Facility personnel who are familiar with the industrial activity, the BMPs and the storm water pollution prevention plan shall be identified to inspect designated equipment and areas of the facility. Inspections shall be conducted while the facility is in operation and include, but are not limited to, the following areas exposed to storm water: material handling areas, above ground storage tanks, hoppers or silos, dust collection/containment systems, and truck wash down/equipment cleaning areas. The inspection frequency shall be specified in the plan based on a consideration of the level of industrial activity at the facility, but it shall be a minimum of quarterly unless more frequent intervals are specified elsewhere in the permit. A set of tracking or followup procedures shall be used to ensure that appropriate actions are taken in response to the inspections. Records of inspections shall be maintained with the pollution prevention plan.

(5) Employee training. Employee training programs shall inform personnel responsible for implementing activities identified in the storm water pollution prevention plan or otherwise responsible for storm water management at all levels of responsibility of the components and goals of the storm water pollution prevention plan. Training should address topics such as spill response, good housekeeping and material management practices. A pollution prevention plan shall identify periodic dates for such training.

(6) Recordkeeping and internal reporting procedures. A description of incidents such as spills, or other discharges, along with other information describing the quality and quantity of storm water discharges shall be included in the plan. Inspections and maintenance activities shall be documented and records of such activities shall be incorporated into the plan.

(7) Sediment and erosion control. The plan shall identify areas which, due to topography, activities, or other factors, have a high potential for significant soil erosion, and identify structural, vegetative, and/or stabilization measures to be used to limit erosion.

(8) Management of runoff. The plan shall contain a narrative consideration of the appropriateness of traditional storm water management practices (practices other than those which control the generation or source(s) of pollutants) used to divert, infiltrate, reuse, or otherwise manage storm water runoff in a manner that reduces pollutants in storm water discharges from the site. The plan shall provide that measures that the permittee determines to be reasonable and appropriate shall be implemented and maintained. The potential of various sources at the facility to contribute pollutants to storm water discharges associated with industrial activity shall be considered when determining reasonable and appropriate

measures. Appropriate measures may include: vegetative swales and practices, reuse of collected storm water (such as for a process or as an irrigation source), inlet controls (such as oil/water separators), snow management activities, infiltration devices, wet detention/retention devices; or other equivalent measures.

d. Comprehensive site compliance evaluation. Qualified facility personnel who are familiar with the industrial activity, the BMPs and the storm water pollution prevention plan shall conduct site compliance evaluations at appropriate intervals specified in the plan, but, in no case less than once a year. Such evaluations shall include the following:

(1) Areas contributing to a storm water discharge associated with industrial activity shall be visually inspected for evidence of, or the potential for, pollutants entering the drainage system. Measures to reduce pollutant loadings shall be evaluated to determine whether they are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed. Structural storm water management measures, sediment and erosion control measures, and other structural pollution prevention measures identified in the plan shall be observed to ensure that they are operating correctly. A visual inspection of equipment needed to implement the plan, such as spill response equipment, shall be made.

(2) Based on the results of the evaluation, the description of potential pollutant sources identified in the plan in accordance with Part II G 4 b and pollution prevention measures and controls identified in the plan in accordance with Part II G 4 c shall be revised as appropriate within two weeks of such evaluation and shall provide for implementation of any changes to the plan in a timely manner, but in no case more than 12 weeks after the evaluation.

(3) A report summarizing the scope of the inspection, personnel making the inspection, the date(s) of the inspection, major observations relating to the implementation of the storm water pollution prevention plan, and actions taken in accordance with Part II G 4 d shall be made and retained as part of the storm water pollution prevention plan as required in Part III B. The report shall identify any incidents of noncompliance. Where a report does not identify any incidents of noncompliance, the report shall contain a certification that the facility is in compliance with the storm water pollution prevention plan and this permit. The report shall be signed in accordance with Part III K.

(4) Where compliance evaluation schedules overlap with inspections required under Part II G 4 c (4), the compliance evaluation may be conducted in place of one such inspection.

5. Special pollution prevention plan requirements:

a. Additional requirements for storm water discharges associated with industrial activity from facilities subject to §313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) reporting requirements. Potential pollutant sources for which the facility has reporting requirements under EPCRA 313 must be identified in the summary of potential pollutant sources as per Part II G 4 b.

b. Additional requirements for salt storage. Storage piles of salt used for deicing or other commercial or industrial purposes must be enclosed or covered to prevent exposure to precipitation (except for exposure resulting from adding or removing materials from the pile). Piles do not need to be enclosed or covered where storm water from the pile is not discharged to surface waters or the discharges from the piles are authorized under another permit.

CONDITIONS APPLICABLE TO ALL VPDES PERMITS

**A. Monitoring**

1. Samples and measurements taken as required by this permit shall be representative of the monitored activity.
2. Monitoring shall be conducted according to procedures approved under Title 40 Code of Federal Regulations Part 136 or alternative methods approved by the U.S. Environmental Protection Agency, unless other procedures have been specified in this permit.
3. The permittee shall periodically calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals that will insure accuracy of measurements.

**B. Records**

1. Records of monitoring information shall include:
  - a. The date, exact place, and time of sampling or measurements;
  - b. The individual(s) who performed the sampling or measurements;
  - c. The date(s) and time(s) analyses were performed;
  - d. The individual(s) who performed the analyses;
  - e. The analytical techniques or methods used; and
  - f. The results of such analyses.
2. Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years, the permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report or application. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the permittee, or as requested by the Board.

**C. Reporting Monitoring Results**

1. The permittee shall submit the results of the monitoring required by this permit not later than the 10th day of the month after monitoring takes place, unless another reporting schedule is specified elsewhere in this permit. Monitoring results shall be submitted to:

Department of Environmental Quality - Northern Regional Office (DEQ-NRO)  
13901 Crown Court  
Woodbridge, VA 22193

Monitoring results shall be reported on a Discharge Monitoring Report (DMR) or on forms provided, approved or specified by the Department.

2. If the permittee monitors any pollutant specifically addressed by this permit more frequently than required by this permit using test procedures approved under Title 40 of the Code of Federal Regulations Part 136 or using other test procedures approved by the U.S. Environmental Protection Agency or using procedures specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or reporting form specified by the Department.

3. Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in this permit.

**D. Duty to Provide Information.**

The permittee shall furnish to the Department, within a reasonable time, any information which the Board may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit. The Board may require the permittee to furnish, upon request, such plans, specifications, and other pertinent information as may be necessary to determine the effect of the wastes from this discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of the State Water Control Law. The permittee shall also furnish to the Department upon request, copies of records required to be kept by this permit.

**E. Compliance Schedule Reports**

Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.

**F. Unauthorized Discharges**

Except in compliance with this permit, or another permit issued by the Board, it shall be unlawful for any person to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; or
2. Otherwise alter the physical, chemical or biological properties of such state waters and make them detrimental to the public health, or to animal or aquatic life, or to the use of such waters for domestic or industrial consumption, or for recreation, or for other uses.

**G. Reports of Unauthorized Discharges.**

Any permittee who discharges or causes or allows a discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance into or upon state waters in violation of Part III.F.; or who discharges or causes or allows a discharge that may reasonably be expected to enter state waters in violation of Part II.F., shall notify the Department of the discharge immediately upon discovery of the discharge, but in no case later than 24 hours after said discovery. A written report of the unauthorized discharge shall be submitted to the Department, within five days of discovery of the discharge. The written report shall contain:

1. A description of the nature and location of the discharge;
2. The cause of the discharge;
3. The date on which the discharge occurred;
4. The length of time that the discharge continued;
5. The volume of the discharge;
6. If the discharge is continuing, how long it is expected to continue;
7. If the discharge is continuing, what the expected total volume of the discharge will be; and
8. Any steps planned or taken to reduce, eliminate and prevent a recurrence of the present discharge or any future discharges not authorized by this permit.

Discharges reportable to the Department under the immediate reporting requirements of other regulations are exempted from this requirement.

#### **H. Reports of Unusual or Extraordinary Discharges.**

If any unusual or extraordinary discharge including a bypass or upset should occur from a treatment works and the discharge enters or could be expected to enter state waters, the permittee shall promptly notify, in no case later than 24 hours, the Department by telephone after the discovery of the discharge. This notification shall provide all available details of the incident, including any adverse affects on aquatic life and the known number of fish killed. The permittee shall reduce the report to writing and shall submit it to the Department within five days of discovery of the discharge in accordance with Part III.I.2. Unusual and extraordinary discharges include but are not limited to any discharge resulting from:

1. Unusual spillage of materials resulting directly or indirectly from processing operations;
2. Breakdown of processing or accessory equipment;
3. Failure or taking out of service some or all of the treatment works; and
4. Flooding or other acts of nature.

#### **I. Reports of Noncompliance**

The permittee shall report any noncompliance which may adversely affect state waters or may endanger public health.

1. An oral report shall be provided within 24 hours from the time the permittee becomes aware of the circumstances. The following shall be included as information which shall be reported within 24 hours under this paragraph:
  - a. Any unanticipated bypass; and
  - b. Any upset which causes a discharge to surface waters.
2. A written report shall be submitted within 5 days and shall contain:
  - a. A description of the noncompliance and its cause;
  - b. The period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and
  - c. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

The Board may waive the written report on a case-by-case basis for reports of noncompliance under Part II.I. if the oral report has been received within 24 hours and no adverse impact on state waters has been reported.

3. The permittee shall report all instances of noncompliance not reported under Parts II, I.1. or I.2., in writing, at the time the next monitoring reports are submitted. The reports shall contain the information listed in Part II.I.2.

**NOTE:** The immediate (within 24 hours) reports required in Parts II, G., H. and I. may be made to the Department's Northern Regional Office at (703) 583-3800 (voice) or (703) 583-3821 (fax). For reports outside normal working hours, leave a message and this shall fulfill the immediate reporting requirement. For emergencies, the Virginia Department of Emergency Services maintains a 24-hour telephone service at 1-800-468-8892.

**J. Notice of Planned Changes.**

1. The permittee shall give notice to the Department as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:
  - a. The permittee plans alteration or addition to any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:
    - 1) After promulgation of standards of performance under Section 306 of Clean Water Act which are applicable to such source; or
    - 2) After proposal of standards of performance in accordance with Section 306 of Clean Water Act which are applicable to such source, but only if the standards are promulgated in accordance with Section 306 within 120 days of their proposal;
  - b. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations nor to notification requirements specified elsewhere in this permit; or
  - c. The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan.
2. The permittee shall give advance notice to the Department of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

**K. Signatory Requirements.**

1. All permit applications shall be signed as follows:
  - a. For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means:
    - 1) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or
    - 2) The manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;
  - b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or
  - c. For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a public agency includes:
    - 1) The chief executive officer of the agency, or
    - 2) A senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

2. All reports required by permits, and other information requested by the Board shall be signed by a person described in Part II.K.1., or by a duly authorized representative of that person. A person is a duly authorized representative only if:
  - a. The authorization is made in writing by a person described in Part III.K.1.;
  - b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.); and
  - c. The written authorization is submitted to the Department.
3. Changes to authorization. If an authorization under Part II.K.2. is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Part II.K.2. shall be submitted to the Department prior to or together with any reports, or information to be signed by an authorized representative.
4. Certification. Any person signing a document under Parts II, K.1. or K.2. shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

#### **L. Duty to Comply.**

The permittee shall comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the State Water Control Law and the Clean Water Act, except that noncompliance with certain provisions of this permit may constitute a violation of the State Water Control Law but not the Clean Water Act. Permit noncompliance is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.

The permittee shall comply with effluent standards or prohibitions established under Section 307(a) of the Clean Water Act for toxic pollutants and with standards for sewage sludge use or disposal established under Section 405(d) of the Clean Water Act within the time provided in the regulations that establish these standards or prohibitions or standards for sewage sludge use or disposal, even if this permit has not yet been modified to incorporate the requirement.

#### **M. Duty to Reapply.**

If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee shall apply for and obtain a new permit. All permittees with a currently effective permit shall submit a new application at least 180 days before the expiration date of the existing permit, unless permission for a later date has been granted by the Board. The Board shall not grant permission for applications to be submitted later than the expiration date of the existing permit.

**N. Effect of a Permit.**

This permit does not convey any property rights in either real or personal property or any exclusive privileges, nor does it authorize any injury to private property or invasion of personal rights, or any infringement of federal, state or local law or regulations.

**O. State Law.**

Nothing in this permit shall be construed to preclude the institution of any legal action under, or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any other state law or regulation or under authority preserved by Section 510 of the Clean Water Act. Except as provided in permit conditions on "bypassing" (Part III.U.), and "upset" (Part III.V.) nothing in this permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

**P. Oil and Hazardous Substance Liability.**

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under Sections 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.

**Q. Proper Operation and Maintenance.**

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes effective plant performance, adequate funding, adequate staffing, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by the permittee only when the operation is necessary to achieve compliance with the conditions of this permit.

**R. Disposal of solids or sludges.**

Solids, sludges or other pollutants removed in the course of treatment or management of pollutants shall be disposed of in a manner so as to prevent any pollutant from such materials from entering state waters.

**S. Duty to Mitigate.**

The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

**T. Need to Halt or Reduce Activity not a Defense.**

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

#### **U. Bypass.**

1. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of Parts III, U.2. and U.3.
2. Notice
  - a. Anticipated bypass. If the permittee knows in advance of the need for a bypass, prior notice shall be submitted, if possible at least ten days before the date of the bypass.
  - b. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in Part II.I.
3. Prohibition of bypass.
  - a. Bypass is prohibited, and the Board may take enforcement action against a permittee for bypass, unless:
    - 1) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
    - 2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
    - 3) The permittee submitted notices as required under Part III.U.2.
  - b. The Board may approve an anticipated bypass, after considering its adverse effects, if the Board determines that it will meet the three conditions listed above in Part III.U.3.a.

#### **V. Upset.**

1. An upset constitutes an affirmative defense to an action brought for noncompliance with technology based permit effluent limitations if the requirements of Part III.V.2. are met. A determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is not a final administrative action subject to judicial review.
2. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
  - a. An upset occurred and that the permittee can identify the cause(s) of the upset;
  - b. The permitted facility was at the time being properly operated;
  - c. The permittee submitted notice of the upset as required in Part III.I.; and
  - d. The permittee complied with any remedial measures required under Part III.S.
3. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

#### **W. Inspection and Entry**

The permittee shall allow the Director, or an authorized representative, upon presentation of credentials and other documents as may be required by law, to:

1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
4. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act and the State Water Control Law, any substances or parameters at any location.

For purposes of this section, the time for inspection shall be deemed reasonable during regular business hours, and whenever the facility is discharging. Nothing contained herein shall make an inspection unreasonable during an emergency.

#### **X. Permit Actions.**

Permits may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

#### **Y. Transfer of permits**

1. Permits are not transferable to any person except after notice to the Department. Except as provided in Part III.Y.2., a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued, or a minor modification made, to identify the new permittee and incorporate such other requirements as may be necessary under the State Water Control Law and the Clean Water Act.
2. As an alternative to transfers under Part III.Y.1., this permit may be automatically transferred to a new permittee if:
  - a. The current permittee notifies the Department at least 30 days in advance of the proposed transfer of the title to the facility or property;
  - b. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and
  - c. The Board does not notify the existing permittee and the proposed new permittee of its intent to modify or revoke and reissue the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in Part III.Y.2.b.

#### **Z. Severability**

The provisions of this permit are severable, and if any provision of this permit or the application of any provision of this permit to any circumstance is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.